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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2013-0078; Sequence 3]

**Federal Acquisition Regulation; Federal Acquisition Circular
2005-67; Small Entity Compliance Guide**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This Small Entity Compliance Guide has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005-67, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005-67, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: [Insert date of publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005-67 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

List of Rules in FAC 2005-67

<u>Item</u>	<u>Subject</u>	<u>FAR Case</u>	<u>Analyst</u>
*I	Contractors Performing Private Security Functions Outside the United States	2011-029	Jackson
II	Contracting Officer's Representative	2013-004	Jackson
III	System for Award Management Name Change, Phase 1 Implementation	2012-033	Glover
*IV	Interagency Acquisitions: Compliance by Nondefense Agencies with Defense Procurement Requirements	2012-010	Corrigan
*V	Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations (Interim)	2013-005	Petrusek
*VI	Price Analysis Techniques	2012-018	Chambers
*VII	Contracting with Women-owned Small Business Concerns (Interim)	2013-010	Morgan
VIII	Deletion of Report to Congress on Foreign-Manufactured Products	2013-008	Davis
IX	Free Trade Agreement (FTA) - Panama	2012-027	Davis

X Updated Postretirement 2011-019 Chambers
Benefit (PRB) References

XI Technical Amendments

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005-67 amends the FAR as specified below:

**Item I—Contractors Performing Private Security Functions
Outside the United States (FAR Case 2011-029)**

DoD, GSA, and NASA are issuing a final rule amending the FAR to implement Governmentwide requirements contained in section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 (Pub. L. 110-181), as amended by section 853 of the NDAA for FY 2009 (Pub. L. 110-417) and sections 831 and 832 of the NDAA for FY 2011 (Pub. L. 111-383). See 10 U.S.C. 2302 Note. These statutes establish minimum processes and requirements for the selection, accountability, training, equipping, and conduct of personnel performing private security functions outside the United States.

Item II—Contracting Officer's Representative (FAR Case 2013-004)

This final rule amends the FAR to improve contract surveillance by clarifying the contracting officer's representative (COR) responsibilities in FAR 1.602-2(d). In

addition, a corresponding change is also made at FAR 7.104(e). This case originated from a Department of Defense (DoD) Panel on Contracting Integrity recommendation. The DoD Panel on Contracting Integrity, an internal DoD panel, consists of senior-level DoD officials from across DoD working to review progress made by DoD to eliminate areas of vulnerability of the defense contracting system that allow fraud, waste, and abuse to occur, and recommend changes in law, regulations, and policy to eliminate the areas of vulnerability. In order to improve the contracting environment, this rule provides additional explanation in the FAR to ensure that CORs understand their duties and responsibilities to survey contractor performance. This final rule is not required to be published for public comment because it only involves internal Government procedures regarding the appointment of CORs and the clarification of COR responsibilities, and has neither a significant effect beyond the internal operation procedures of the agency issuing the policy, regulation, procedure or form, nor has a significant cost or administrative impact on contractors or offerors.

Item III–System for Award Management Name Change, Phase 1 Implementation (FAR Case 2012-033)

This final rule amends the FAR by updating references and names to conform to the System for Award Management (SAM) designation. The SAM is a Federal Government owned

and operated free web site that consolidates the capabilities in certain legacy systems that are used by Federal officials in the procurement and awards process. This rule incorporates language that will transition the Central Contractor Registration (CCR) database, the Excluded Parties List System (EPLS), and the Online Representations and Certifications Application (ORCA) to the SAM designation. This final rule also makes a number of minor additional conforming changes, such as updates to definitions.

Item IV—Interagency Acquisitions: Compliance by Nondefense Agencies with Defense Procurement Requirements (FAR Case 2012-010)

This final rule adopts with minor changes an interim rule published in the Federal Register at 77 FR 69720 on November 20, 2012. The interim rule amended the FAR to implement section 801 of Pub. L. 110-181, as amended (10 U.S.C. 2304 Note). Section 801 requires compliance certifications by nondefense agencies that purchase on behalf of the Department of Defense (DoD), and clarifies which DoD laws and regulations apply. The agencies must comply with new FAR subpart 17.7, in addition to complying with FAR subpart 17.5. To provide clarification for small business and contracting officers, existing policy for small business goal credit for assisted acquisitions was added by the interim rule to section FAR 4.603(c).

Item V—Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations (FAR Case 2013-005) (Interim)

This interim rule amends the FAR to address concerns raised in an opinion from the U.S. Department of Justice Office of Legal Counsel that determined the Anti-Deficiency Act is violated when a Government contracting officer or other employee with the authority to bind the Government agrees, without statutory authorization or other exception, to an open-ended, unrestricted indemnification clause. This rule clarifies for the public that an End User License Agreement (EULA), Terms of Service (TOS), or similar agreement, containing an indemnification provision, is unenforceable and nonbinding against the Government and Government-authorized end-users. The rule contains a new clause that applies to all solicitations and contracts and automatically applies to micro-purchases, including those made with the Governmentwide purchase card.

Item VI—Price Analysis Techniques (FAR Case 2012-018)

This final rule amends the FAR to clarify a reference used in FAR 15.404-1(b)(2)(i). FAR 15.404-1(b)(2) delineates the various price analysis techniques (to ensure a fair and reasonable price) with 15.404-1(b)(2)(i) being the comparison of proposed prices received from multiple offerors in response to a solicitation. The current reference in this section (FAR 15.403-1(c)(1)) was too

broad; thus, this final rule changes this reference to 15.403-1(c)(1)(i), which precisely aligns the price analysis technique of comparing proposed prices in 15.404-1(b)(2)(i) with the adequate price competition standard (for exceptions from certified cost or pricing data requirements) of comparing proposed prices from multiple offerors. Small businesses are not impacted by this final rule because this rule merely clarifies the reference, changing it to cite FAR 15.403-1(c)(1)(i) (rather than the more generalized 15.403-1(c)(1)) at 15.404-1(b)(2)(i), which describes the use of the price analysis technique of comparing proposed prices from multiple offerors in order to establish a fair and reasonable price.

Item VII—Contracting with Women-owned Small Business

Concerns (FAR Case 2013-010) (Interim)

This interim rule amends FAR 19.1505 to remove the dollar limitation for set-asides for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the Women-owned Small Business (WOSB) Program. This change implements section 1697 of the NDAA for FY 2013, Public Law 112-239, which amended section 8(m) of the Small Business Act, (15 U.S.C. 637(m)).

As a result, contracting officers may set aside acquisitions for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program at any

dollar level above the micro-purchase threshold, provided the other requirements for a set-aside under the WOSB Program are met.

Item VIII—Deletion of Report to Congress on Foreign-Manufactured Products (FAR Case 2013-008)

This final rule amends the FAR to eliminate an obsolete Congressional reporting requirement imposed by the United States Troops Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (41 U.S.C. 8302(b)(1)).

This Act required these reports to Congress for Fiscal Year 2007 through Fiscal Year 2011 on acquisitions of end products manufactured outside the United States. This report to Congress is no longer required but the collection of the data in Federal Procurement Data System is still required (see FAR 52.225-18, Place of Manufacture). This final rule only affects the internal operating procedures of the Government.

Item IX—Free Trade Agreement (FTA)—Panama (FAR Case 2012-027)

This final rule adopts without change an interim rule published November 20, 2012, which implemented a new Free Trade Agreement with Panama (see the United States—Panama Trade Promotion Agreement Implementation Act (Pub. L. 112-43) (19 U.S.C. 3805 note)).

This Trade Promotion Agreement is a free trade agreement that provides for mutually non-discriminatory treatment of eligible products and services from Panama. This final rule is not expected to have a significant economic impact on a substantial number of small entities.

Item X-Updated Postretirement Benefit (PRB) References (FAR Case 2011-019)

This final rule amends FAR 31.205-6(o)(2)(iii)(A)(1) to remove references to paragraphs 110, 112, and 113 of the now superseded Financial Accounting Standard (FAS) 106, which were deleted in the Financial Accounting Standards Board's (FASB's) Accounting Standards Codification (ASC) of generally accepted accounting principles (GAAP) and replaces them with explicit criteria that are their functional equivalent. The FAR referenced GAAP to provide criteria for determining the allowability of the transition obligation, when converting from pay-as-you-go accounting for postretirement benefits (PRBs) to an accrual method of accounting for the purposes of Government contract cost accounting.

This final rule will have a minimal economic impact on small businesses because it does not change the FAR substantively.

Item XI-Technical Amendments

Editorial changes are made at FAR 8.703, 8.714, 52.204-8, and 52.204-10.

Dated: June 13, 2013

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